

**APPENDIX OF EXHIBITS IN SUPPORT OF
PLAINTIFFS' REPLY IN SUPPORT OF MOTION
FOR PARTIAL SUMMARY JUDGMENT
REGARDING DEFENDANTS' OBLIGATION TO
PROVIDE BEDS
JANE DOE #1 v. NIELSEN
Case No. 4:15-cv-00250-TUC-DCB**

Exhibit 1

Exhibit 1

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Jane Doe #1; Jane Doe #2,
Norlan Flores, on behalf of
themselves and all others
similarly situated,

Plaintiffs,

vs.

Jeh Johnson, Secretary, United
States Department of Homeland
Security, in his official capacity;
R. Gil Kerlikowske, Commissioner,
United States Customs and Border
Protection, in his official capacity;
Jeffrey Self, Commander, Arizona
Joint Field Command, in his official
capacity; Manuel Padilla, Jr.,
Chief Patrol Agent-Tucson Sector,
in his official capacity,

Defendants.

CV 15-250-TUC-DCB

November 15, 2016
Tucson, Arizona
9:00 a.m.

EVIDENTIARY HEARING - DAY 2

BEFORE: HONORABLE DAVID C. BURY
UNITED STATES DISTRICT JUDGE

Ms. Dianne Davenport, RDR, CRR
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Tucson, Arizona 85701
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ALLEN - DIRECT

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1 longer one. I wanted to point that out. Otherwise, we are ready to go.

2 THE COURT: Let's keep going.

3 GEORGE ALLEN, DEFENSE WITNESS, SWORN

4 THE COURT: Please state your full name and spell your last name
5 for the record.

6 THE WITNESS: George W. Allen. A-l-l-e-n.

7 MS. FABIAN: Your Honor, we have just a demonstrative
8 exhibit to explain some of his testimony that we would like to place up
9 on the screen.

10 THE COURT: Sure.

11 DIRECT EXAMINATION

12 BY MS. FABIAN:

13 Q. Chief Allen, can you please explain your title and your position
14 with the U.S. Border Patrol.

15 A. Yes. My title is Assistant Chief Patrol Agent. And I'm assigned to
16 the Tucson sector. And my duties involve prosecutions, asset forfeiture,
17 processing, transportation, and transfer.

18 Q. And for those of us who are less familiar with Border Patrol, just
19 day to day what's your role with regard to the sector?

20 A. My role is reviewing certain cases that are encountered; assisting
21 in making decisions on what route that may take, whether it is a
22 criminal or administrative process; implementing policies; clarifying
23 policies; getting clarification from Washington, D.C., on policies; and
24 disseminating those policies.

25 Q. Who is your boss at Tucson sector?

ALLEN - CROSS

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1 MS. FABIAN: Objection. It's asking him to decide if he's
2 complying with a legal opinion and it doesn't apply to this case or to his
3 facilities.

4 THE COURT: He's just asking -- well, he's asking the
5 question he did, is this what they do.

6 THE WITNESS: Some parts are similar. Obviously some
7 parts aren't.

8 BY MR. MCELHINNY:

9 Q. Which parts of this would you say you don't do?

10 A. The part we don't do? Well, obviously we do not have medical
11 professional -- I mean, a mental health professional, psychologist on
12 our staff. Once again, we are a processing facility, not a jail like this is.

13 Q. Do you provide any mental health screening at all?

14 A. We do observation, talking to somebody, records check to see if
15 there is any prior history notated, that's the --

16 Q. If you look at the next page in paragraph 24, and particularly the
17 last sentence that says, "Almost half of inmates booked each day are
18 identified as needing further evaluation by a registered nurse."

19 Is that your experience in your detention facilities, that 50
20 percent of people that you are booking require a second step in the
21 screening process?

22 A. In our processing facilities, that's not our experience. We have
23 quite a different dynamic of people we service versus a jail.

24 Q. What do you mean by a "different dynamic"? You mean
25 healthier?

ALLEN - CROSS

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1 A. You know, basically I'd say healthier absolutely. It's a cross-
2 section, but we deal with all kinds of individuals. Like I said, we deal
3 with aggravated felons, criminal aliens, people smuggling drugs, people
4 trafficking other human beings, but we also deal with migrants.

5 Q. And people from India and Pakistan?

6 A. And people from all over.

7 Q. But your experience is you don't see -- 50 percent of your people
8 don't require a next step in a screening process?

9 A. That's correct.

10 Q. And then if you look at paragraph 25, it says, "At least one
11 medical provider, a physician, physician assistant, or nurse practitioner
12 is assigned to the intake center 24 hours a day, seven days a week."
13 You don't have that?

14 A. Once again, this is a jail. We're a processing center. We would
15 be the same as the Tucson police station intake. They pick up
16 somebody for DUI. They take them. They process them. Give them
17 the breathalyzer. There is not going to be a physician assistant there.
18 There is not going to be a mental health expert there. When they are
19 completed with their processing, they take them to the jailer, which is
20 Pima County jail, and they book them into the Pima County jail. ICRO
21 is our jailer.

22 Q. Remind me how many detainees you bring into a general
23 population in a year?

24 A. In a year? This past last fiscal year about 65,000.

25 Q. And in your entire sector, you don't have a medical professional

ALLEN - COURT EXAMINATION

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1 transition out slower. Then our population is going to be quite larger.
2 It may not be reflective of the 177 that we averaged this past fiscal
3 year. Of that maybe we would have three to four times in custody.

4 MS. FABIAN: A moment to confer, Your Honor.

5 THE COURT: All right.

6 MS. FABIAN: I have no further questions, Your Honor.

7 THE COURT: Chief, a couple of questions for you.

8 THE WITNESS: Yes, sir.

9 THE COURT: Since you refer to this as a processing center,
10 this answer is pretty obvious, but I need to get it on the record.

11 THE WITNESS: Yes, Your Honor.

12 THE COURT: When a person is brought to your processing
13 center and booked or interviewed initially, they are not free to leave
14 until you say so, correct?

15 THE WITNESS: That is correct.

16 THE COURT: They are in your custody?

17 THE WITNESS: Yes.

18 THE COURT: And probably 20 to 30,000 of them every year
19 are in your custody for 48 to 72 hours, correct?

20 THE WITNESS: Yes.

21 THE COURT: All right. If Cochise County Sheriff arrests a
22 guy for armed robbery in Nogales, takes him to the Santa Cruz County
23 jail and he's booked into that jail, does he have better facilities
24 available to him than 20 to 30,000 of your detainees?

25 THE WITNESS: Absolutely.

ALLEN - COURT EXAMINATION

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1 THE COURT: He has a bed?

2 THE WITNESS: He has a bed.

3 THE COURT: Toilet?

4 THE WITNESS: Yes.

5 THE COURT: Clothing?

6 THE WITNESS: Yes.

7 THE COURT: Food?

8 THE WITNESS: Yes.

9 THE COURT: Warmth?

10 THE WITNESS: Yes.

11 THE COURT: Don't you think it's time that your facilities are
12 modified or changed to accommodate the human need at least for
13 sleep if you are going to keep somebody for two or three days?

14 THE WITNESS: I don't know if modifying our facilities is the
15 direction to go. It is making available the facilities that exist where
16 they are supposed to go available. That's passing the buck. But
17 Border Patrol is very good at what they do. That's detecting and
18 deterring and interdicting and processing and identification.

19 What we're looking for is our next step is the U.S. Marshals to
20 say, here, CCA, you got 100 beds. You'll take everybody to CCA that's
21 going to come to court. On Friday you take them there and drop them
22 off and come back. Obviously that's DOJ. We're DHS. That is out of
23 our control. ICRO has multiple facilities that immediately take them.

24 THE COURT: I'm just asking you about a basic human need
25 for sleep. In a period of two or three days, don't you think that should

HARBER - DIRECT

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1 be provided, a sleeping condition such as, at the very least, a mat, if
2 not a cot or some kind of a bed? Don't you think it's time to do that,
3 Chief?

4 THE WITNESS: It's time to have that provided. But, once
5 again, we need a place to provide it.

6 THE COURT: You can step down. Thank you.
7 You have two more witnesses?

8 MS. FABIAN: Yes, Your Honor.

9 THE COURT: Let's do them efficiently if we could.

10 MR. CELONE: The government would like to call Dr. Harber
11 to the stand.

12 PHILIP HARBER, DEFENSE WITNESS, SWORN

13 THE CLERK: Please state your full name and spell your last
14 name for the record.

15 THE WITNESS: Philip Harber. H-a-r-b-e-r.

16 DIRECT EXAMINATION

17 BY MR. CELONE:

18 Q. Thank you, Dr. Harber. What is your current profession?

19 A. I'm a physician and professor.

20 Q. Where are you a professor?

21 A. The University of Arizona College of Public Health.

22 Q. What do you teach?

23 A. My area -- I'm in the College of Public Health. I'm in the
24 Department of Community Environment and Policy.

25 Q. What is your educational background?

BRYCE - REDIRECT

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C E R T I F I C A T E

I, Dianne Davenport, certify that the foregoing is a correct transcript to the best of my ability from the record of proceedings in the above-entitled matter.

s/ Dianne Davenport
Dianne Davenport, RDR, CRR

November 27, 2016